

148.1

REPORT ON FOSTER CARE
IN CALIFORNIA

JUNE 1973

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FOURTH DISTRICT

Joint Legislative Audit Committee

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California Legislature

VINCENT THOMAS
CHAIRMAN

ROOM 4126, STATE CAPITOL
SACRAMENTO, CALIFORNIA 95814
(916) 445-7906

MERRILL E. TOMPKINS, C.P.A., COORDINATOR
(916) 445-1850

EVE OSTOJA, OFFICE MANAGER
(916) 445-7908

SENATORS

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August 13, 1973

The Honorable President of the Senate
The Honorable Speaker of the Assembly
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members:

Transmitted herewith is a preliminary report on foster care in California. It covers those foster care programs financed through the county welfare system which cost about \$125 million per year.

These programs provide care for between 40,000 and 50,000 children, which is 60 to 75 percent of the children receiving foster care in California. Of these 40,000 to 50,000 children, about 30,000 are placed with non-relatives, and 10,000 to 15,000 are placed with relatives.

Non-relative foster care placement is financed through the State Department of Social Welfare's (SDSW) Boarding Homes and Institutions (BHI) program. Foster care placement with relatives is financed by SDSW's Aid to Families with Dependent Children-Family Group (AFDC-FG) program.

Current foster care financial arrangements discourage the placement of foster children with relatives. Differences in the payment schedules for related and non-related foster parents also increase the difficulty of siblings remaining together after removal from their parents' home. The average monthly payment for foster children living with relatives is \$75 (ranging from \$48 to \$115), with non-relatives \$138 (ranging from \$90 to \$152), and for institutionalized care \$500 (ranging from \$350 to \$900).

An estimated \$18 million in available federal reimbursements has not been claimed. Due to inadequate, and in some cases inaccurate, information supplied to the county welfare agencies by SDSW, approximately 2,600

The Honorable Members of the Legislature
August 13, 1973
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federally eligible children have not been claimed for federal reimbursement. SDSW should provide the county welfare agencies with information to enable them to properly identify those children qualified for federal reimbursement. Also, SDSW should request counties to review their entire foster care case-load, and should provide the technical assistance necessary for proper identification and qualification of all cases eligible for federal funding as soon as possible.

The foster care program is made up of an overly complex array of authorities and responsibilities. Reorganization of the Health and Welfare Department on July 1, 1973, effected only minor changes in the relationships among the various agencies having responsibility for foster care in California. Prior to July 1, three state departments (Welfare, Public Health, and Mental Hygiene) had licensing responsibilities for institutions providing out-of-home care. The reorganization's net effect was the consolidation of the single function of institutional licensing into one department.

Supervision and administration remains fragmented, resulting in tremendous fluctuations in payment rates from county to county as well as uneven and unequal provision of services. Effective organization to untangle this administrative web is necessary to expedite claims for federal funding and to better balance the inequities now present in the system.

Sincerely,

A handwritten signature in cursive script, reading "Vincent Thomas".

VINCENT THOMAS, Chairman
Joint Legislative Audit Committee

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INTRODUCTION

This preliminary report is prepared in response to a request from the Senate Committee on Health and Welfare for a review of foster care programs throughout the state.

It contains:

- Comments on certain financial and administrative aspects of the system, and
- A description of the foster care system in California.

Foster care, in its broadest sense, includes any program designed to provide 24-hour, out-of-home care to children. This report is limited to those foster care programs which are either:

- Administered by county welfare departments, or
- Administered by county probation departments but financed through the county welfare mechanism.

Based on available data, we estimate that these programs provide foster care to between 40 and 50 thousand children and include between 60 and 75 percent of the children receiving foster care in California.

The estimated 40 to 50 thousand children who received foster care under programs within the scope of this report include:

- Approximately 30,000 children placed with non-relatives whose foster care is financed under the State Department

of Social Welfare's (SDSW) Boarding Homes and Institutions (BHI) program.

- Ten to 15 thousand children placed with relatives whose care is financed by SDSW's Aid to Families with Dependent Children - Family Group (AFDC-FG) program.

Not covered in this report are foster care programs providing care to the following children:

- Children who are supervised by the county probation department, but who qualify for a state subsidy under the Department of Youth Authority. The funding, supervision and administrative control of this program flows through totally different administrative channels and it constitutes a distinct population of children under the authority of the penal system.
- Children who are supervised by the State Departments of Mental Hygiene (SDMH) or Public Health (SDPH). The children placed in facilities supervised by these state departments are generally, but not necessarily, more severely mentally ill, retarded or physically handicapped than the children who are placed in other foster care programs. (On July 1, 1973, SDMH and SDPH were consolidated within the new State Department of Health.)

Our fieldwork so far has included interviews with federal, state and county officials involved in the administration of foster care and a survey of 415 case histories from the following eight counties which together account for about 60 percent of the state's population.

<u>County</u>	<u>Number of Case Files Reviewed</u>	<u>County's 1972 Population* As a Percent of Total State Population</u>
Los Angeles	171	34.0%
Monterey	20	1.2
Orange	29	7.6
Riverside	37	2.4
Sacramento	20	3.3
San Diego	34	7.1
San Francisco	43	3.3
San Mateo	<u>61</u>	<u>2.7</u>
Total	<u>415</u>	<u>61.6%</u>

*Population data is from 1972 Department of Finance population estimates.

FINDINGS

1. AN ESTIMATED \$18 MILLION IN AVAILABLE FEDERAL REIMBURSEMENTS HAS NOT BEEN CLAIMED.

Federal regulations limit federal financial participation in BHI maintenance payments to children who have been removed from their home by a court order. While there are, of course, other limiting factors, it is this one requirement that most distinguishes children in the BHI program who are eligible for federal reimbursement from their counterparts who are not.

Because of inadequate and, in some cases, inaccurate information supplied by SDSW, approximately 2,600 federally eligible children placed in foster homes after having been judged a ward of the court (Welfare and Institutions Code Sections 601 or 602) have not been claimed for federal reimbursement.

In addition, we estimate that a minimum of 550 federally eligible children placed in foster homes after being judged a dependent of the court (Welfare and Institutions Code Section 600) also have not been claimed for federal reimbursement.

The statewide average cost per child per year for maintenance payments made to foster parents is slightly over \$2,400. The federal share of 50 percent is thus slightly over \$1,200 per federally eligible child. This \$1,200 federal share multiplied by the 3,150 (2,600 + 550) federally eligible foster children for which reimbursement was not claimed equals an estimated \$3.8 million 1972-73 loss of federal reimbursements.

The \$3.8 million in federal reimbursements that has not been claimed for 1972-73 has resulted in the unnecessary expenditure of \$1.5 million of state and \$2.2 million of county funds.

Since this claiming deficiency has existed since the inception of the federal policy to share in the cost of foster care (January 2, 1967), the loss of federal reimbursements amounts to an estimated \$18 million for the 6-1/2 years ended June 30, 1973.

Amended Claims Can Be Filed

Current federal regulations permit the filing of amended claims to cover previously unclaimed federal reimbursements for maintenance payments made on behalf of federally eligible foster children. There is currently no formal "statute of limitations" with respect to how far back these amended claims may go. There will be a practical limit as to how far back each county will be able to supply the necessary documentation for these claims. This will depend on the quality of each county's records and its document retention practices. The interpretation of certain federal regulations regarding the establishment of federal eligibility may limit the period for which retroactive claims may be filed.

It will be necessary, in some instances, for county welfare departments to negotiate an agreement with county probation departments in order to qualify some children for federal matching. Such an agreement would not have a significant effect on program operation unless the probation department in a given county was using unlicensed foster homes, in which case, it would have to begin using licensed homes.

On October 30, 1972, SDSW Instructed
The Counties not to Claim State Or
Federal Reimbursement for the Maintenance
Cost of Section 601 or 602
Foster Children

On October 30, 1972, SDSW issued Circular Letter No. 2585 (reproduced as Exhibit A on page 41 of this report). Counties were instructed that they could no longer claim state or federal reimbursement for the cost of maintenance payments made to foster parents on behalf of children placed in foster homes after having been judged a ward of the court under Welfare and Institutions Code Section 601 or 602. Very few counties had been claiming these cases for federal reimbursement but most were claiming them for state reimbursement.

The effect of these instructions, had they remained in effect, would have been to transfer state expenditures of about \$2.6 million per year to the counties.

On November 20, 1972, SDSW Canceled
Its October 30, 1972 Memo Which Had
Instructed Counties not to Claim State
or Federal Reimbursement for The
Maintenance Cost of Section 601 or 602
Foster Children

The October 30, 1972 instructions were canceled by SDSW on November 20, 1972 with a letter to the counties (reproduced as Exhibit B, on page 42 of this report) notifying them that they would "not be required to change existing procedures pending the outcome of our (SDSW) inquiry".

On January 12, 1973, the SDSW
Received an Informal Opinion From
the Attorney General that Certain
"601 and 602 juveniles placed In
foster care" are Eligible for State
and Federal Funding

In a memorandum dated January 12, 1973, (reproduced as Exhibit C,
page 43 of this report) the Attorney General responding to a request from
SDSW advised that:

"Although the issue is clouded by a narrow reading of
(SDSW regulation) H4-305.13 and the federal legislative
history supporting that reading, a literal reading of
Sec. 408 (of Title IV of the Social Security Act) and
(federal regulation) H5 CFR Sec. 233.110 would allow
federal participation for otherwise eligible (Section)
601 and 602 (Welfare and Institutions Code) juveniles
(placed) in foster care. A change in the language of
(SDSW) regulation H4-305.13 to broaden its scope and
bring it into conformity with (federal regulation)
H5 CFR 233.110 would clarify the matter."

A January 26, 1973 SDSW Telephone
Survey of County Welfare Offices
Indicated that There Were An
Estimated 2,600 Federally Eligible
Foster Children for whom Reim-
bursement Was Not Being Claimed

SDSW on January 26, 1973, made a telephone survey of 35 counties
with about 78 percent of the foster care caseload to determine how many
federally eligible 601 and 602 foster children there were. The survey
indicated that 8.93 percent of the caseload in those counties was federally
eligible Section 601 or 602 foster children. Projecting this statewide, by
multiplying the total foster care caseload (30,800) by 8.93 percent, the
department estimated that there were 2,750 such foster children statewide
of which 150 had been claimed for federal reimbursement.

No Further Written Instructions
Regarding Section 601 and 602 Foster
Children Have Been Provided to The
Counties Since November 20, 1972

As of the end of our fieldwork in mid-June 1973, no further written instructions have been provided by SDSW to the counties since the November 20, 1972 memorandum rescinding SDSW Circular Letter 2585. This is in spite of the Attorney General's advice and in spite of the results of the January 26, 1973 telephone survey which indicated 2,600 federally eligible foster children were not being claimed for federal reimbursement.

2. CURRENT FOSTER CARE FINANCIAL ARRANGEMENTS DISCOURAGE THE PLACEMENT OF FOSTER CHILDREN WITH RELATIVES.

Foster parents are eligible for financial support under the Boarding Homes and Institutions program only if they are not related to the foster child.

Where the foster parents are related to the foster child, they receive financial support for the child under a different program (AFDC-FG). Support levels under this program are substantially lower than under the BHI program. (In some counties foster parents who are related to the foster child do receive services through the BHI program.)

Payments under AFDC-FG for the support of the first foster child placed with relatives is limited to a maximum of \$115 per month, and may be as low as \$48 per month. The maximum increase for a second child is \$75 per month, and for a third or fourth, \$45 each.

The maximum amount is received only by foster parents who are considered needy. The state considers a relative to be needy if either his income is less than the welfare standard or he is receiving welfare payments such as Old Age Assistance. (The welfare standard for a family of four is \$3,360 -- Section 11450, Welfare and Institutions Code.)

In contrast to the \$48 to \$115 per month payment range for one foster child placed with a relative under AFDC-FG, foster parents in the BHI program (non-related foster parents) receive an average of \$138 per month per foster child. The median income of these foster parents is about \$8,500 per year. (The \$138 per month average referred to here is for home placements; the average for all placements including both home and institutional is slightly over \$200 per month.)

If there is more than one child from the same family involved in an out-of-home placement, the difference in the payment structures is even greater than is the case with one child because payments under the BHI program are twice the single child rate for two children, three times the single child rate for three children, and so on, whereas, the rate for additional children living with relatives increases by much smaller increments. For example, the rate structure provides for a maximum increase of \$75 per month for the second child, \$45 each for the third and fourth, and lesser amounts for each additional child. One effect of this payment system is to increase the difficulty of siblings remaining together after removal from their parents' home, because the likelihood that the welfare or probation department will find a home willing to accept multiple placements is much greater when the placement is with relatives than when it is with non-relatives.

The consequences of this differential payment system can best be illustrated by the following example. Seven children were placed with relatives by their mother in October 1971, while she ostensibly looked for housing. However, neither the mother nor the father has been heard from since that time. In January 1972 the relatives concluded that they would not be able to sustain the heavy financial burden of caring for seven children over a prolonged period of time. They applied for assistance from the county welfare department and were given an AFDC grant of \$322 per month (an average of \$46 per child). If the county had been forced to place these children in the home of a non-related person, the monthly cost of care would have been approximately \$847 (an average of \$121 per child) and the chances of placing all seven children in the same

foster home would have been almost zero. Six months later the relatives concluded that their dwindling reserves would not permit them to continue care with support at that level and asked for an increase in support from the welfare department. This request was denied on the basis of state regulations.

The next step in most cases would have been to place the children in a number of different foster homes at the much higher rate; however, the relatives presented their case to the courts in one last effort to keep the family together. The court intervened, made the children "dependents of the court" and ordered the county welfare department to increase the level of payments by \$280 per month. This intervention permitted the children to remain in the same family unit, however, it required very persistent relatives and a court order. Since it was done outside the framework of SDSW regulations, the additional payment is being made exclusively from county funds.

The only unusual things about this example were the persistence of the relatives and the large number of children in one family. In our interviews in eight counties, the administrative and program personnel agreed that this difference in payments often imposes a severe hardship on relatives of foster children and frequently means that relatives are financially unable to accept or to continue to provide for them.

In at least one county the practice of the probation department is to consciously keep the relatives who agree to accept a child in the dark about the availability of support funds. Such placements are most often made by the

courts and the relative under the emotional stress of the moment. In these instances, the relative agrees to accept the child but fails to inquire about financial support. Later if the financial burden threatens the continuing stability of the placement, the county offers an arbitrary supplement of perhaps \$40 per month which is continued until the next crisis and which is then increased to another arbitrary figure of perhaps \$80 per month.

3. THE FOSTER CARE PROGRAM IS MADE UP OF AN OVERLY COMPLEX ARRAY OF AUTHORITIES AND RESPONSIBILITIES.

The chart on the following page illustrates the probable relationships among the various agencies having responsibility for foster care in California after the reorganization of the Health and Welfare Department on July 1, 1973. The chart is based on the best information currently available.

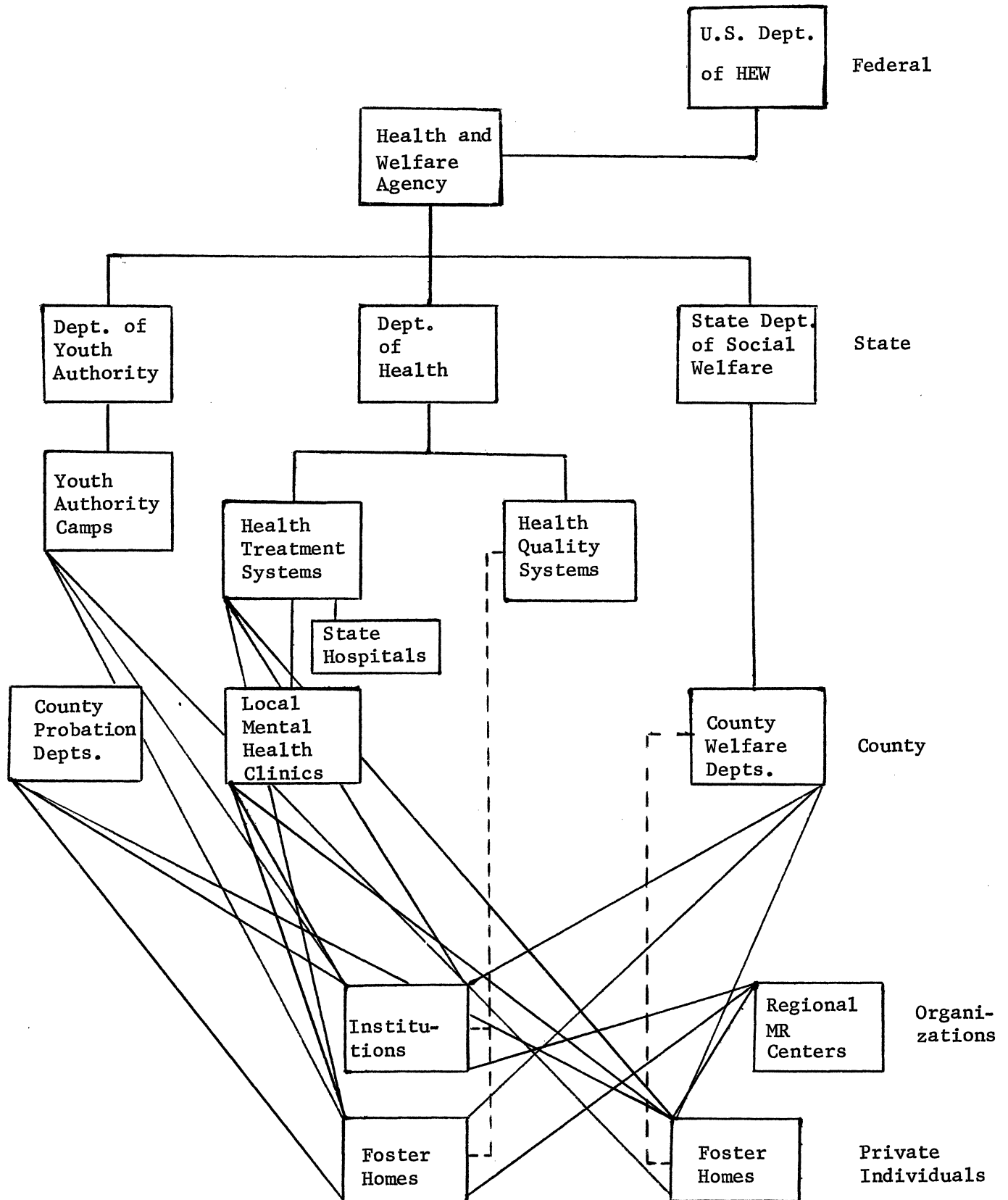
With minor changes, this chart could also be used to illustrate the organizational structure prior to the reorganization.

Formerly, three state departments (Welfare, Public Health and Mental Hygiene) all had licensing responsibilities for institutions providing out-of-home care. County welfare departments license foster family homes and will continue to do so after July 1. The net effect of the reorganization on foster care appears to be the consolidation of this single function (institutional licensing) into one department. Supervision and administration of the basic program will remain fragmented.

Some of the effects of this fragmentation include:

- Tremendous fluctuations in rates from county to county
- Uneven and unequal provision of services
- Diminished visibility of both program costs and population served.

FOSTER CARE PROGRAMS
ORGANIZATIONAL STRUCTURE



THE FUNDING OF FOSTER CARE IN CALIFORNIA

The cost of foster care is shared by various governmental agencies and individuals in California. The cost is functionally divided into: "maintenance costs" which consists of payments to foster parents for day-to-day living expenses; "service cost" which includes the cost of placement, counseling, licensing as well as supervision of the child in foster care; and administrative costs which are relatively minor in amount and except where otherwise indicated have been excluded from the discussions and estimates in this report.

Counties establish the level of payments for maintenance, determine the amount spent on services and administration and are partially reimbursed in varying amounts through federal and state programs.

THE FEDERAL SHARE

Federal funds are provided through the AFDC Program (Title IV-A of the Social Security Act) and are available to reimburse expenditures for both "maintenance" and "services". However, the act covers only AFDC children who have been removed from their homes by a court order. In the past, the need for a court order to earn federal matching has been applied only to the maintenance cost and not service costs. HEW regulations do not require a "judicial determination" for the matching of "services costs". The federal reimbursement rate is 50 percent for maintenance and 75 percent for services.

The foster care children eligible for federal participation fall into three categories:

1. Children in institutional placements (about 1,400 of a total of 5,800 institutional placements in the first quarter of 1973). The average payment per child in this group ranged from \$350 per month upwards to \$900 a month (one institution providing specialized services has a \$1,411/monthly rate). The average for all children in institutions was about \$500 per month.
2. Children living with non-related foster parents (about 10,400 in the first quarter of 1973). The average maintenance cost per child in this group ranged from \$90 per month to \$152 per month depending on the county of residence and averaged \$138 per month statewide.
3. Children living with relatives (about 10,000 in the first quarter of 1973). The average payment per child in this group ranged from \$48 per month to \$115 per month depending on whether the relative was considered to be needy. These payments averaged about \$75 per month in October 1972.

THE STATE SHARE

The state contributes to the support of all the children described above in the section on federally eligible children plus another large group of BHI children (about 19,000 in the first quarter of 1973) who have not been removed from their home under court order. About 4,400 of these children are in institutions and about 14,700 have been placed in the homes of non-related foster parents.

The state reimburses the counties for 67.5 percent of the non-federally reimbursed portion of the first \$120 of average BHI maintenance payments. This means that in counties whose BHI maintenance payments average \$120 per child or more, the state contributes a maximum of \$40.50 per federally eligible child in the BHI program and \$81 per month per non-federally-eligible child.

THE COUNTY SHARE

The county for all practical purposes picks up the balance. A very small percentage of the total cost is defrayed by contributions from the child's natural parents and other income to the child such as social security benefits. In addition, there is a relatively small group of children (less than 1,000 statewide) who do not meet either the state or the federal government's eligibility requirements and are, therefore, carried completely at the counties' expense.

In the BHI program in Los Angeles, the county share of that program exceeds 50 percent. In San Diego, the county share approaches 50 percent. In Fresno, the county share of costs is relatively low. The small proportion of county funds used in the Fresno program is the result of both a very low basic payment and a high proportion of cases eligible for federal matching. (See Tables 1, 2 and 3 in Appendix A.)

Since more than 60 percent of the BHI caseload is not being claimed as federally eligible and since 89 percent of the BHI children live in counties where the average grant exceeds \$120 (the statewide average grant is about \$200), county government statewide picks up the biggest single share of the costs.

FUNDING OF SERVICE COSTS

HEW regulations in effect as of June 1, 1973 (45 CFR 220.61) provide 75 percent reimbursement for the salaries of service workers, their supervisors and support staff and related costs of training and staff development. The salaries of eligibility workers, administrative costs, overhead and all other costs are reimbursed at a 50 percent rate.

Proposed regulation to take effect November 1, 1973 will continue this level of federal support for services to all children in foster care, regardless of federal eligibility for maintenance with the exception of children in foster homes classified as pre-adoptive placements. If these regulations are implemented, services to this relatively small group of children will no longer be subject to federal matching.

PROGRAM DESCRIPTION

GOALS

The State Department of Social Welfare Manual, Regulation 30-301, states that the objective of the foster care program is to provide temporary or long-term, 24-hour care in licensed facilities for children under 18 years of age who cannot remain in their own homes.

The services to be provided for children receiving aid in the form of foster care are set forth in 45 CFR 221.9 to be implemented on November 1, 1973.

. These services include:

- Placement of a child in a foster family home, or group care facility as a result of a judicial determination that continuation of care in the child's own home would be contrary to the welfare of that child
- Services needed by the child while awaiting placement
- Counseling with the parent or other responsible relative to improve home conditions and enable the child to return to his own home or the home of another relative as soon as feasible
- Supervision of the care of the child in foster care
- Periodic review of the placement, at least annually, to determine its continuing appropriateness.

LICENSING

Each county has the responsibility to license foster care homes for one to fifteen children up to the age of eighteen. When there are more than 15 children, the state assumes the responsibility. For each license the county issues or renews, the state pays the county \$65. The state will reimburse the county for costs over \$65 if the county can demonstrate that its excess costs were unavoidable. No payment is made for the county's cost of studying a possible home if the county decides not to license it. Licensees themselves pay no fees.

To be licensed as foster parents, individuals must

- Get a medical examination which includes a tuberculosis x-ray
- Be fingerprinted and obtain a criminal record clearance
- Have income sufficient to meet their own needs apart from any BHI payments
- Be able to provide a suitable family environment for the child
- Have a large enough house that can pass inspection of the local fire district
- Refrain from using corporal punishment, and
- Not discriminate as to race or ethnic origin.

The license issued for one year states the number, age range and sex of the children for whom care is to be provided. Occasionally a license will restrict foster parents to caring for only a particular child or only for children placed by a particular agency. A few licenses permit foster parents to take in unwed mothers and their children.

THE CHILDREN AND THE
STRUCTURE, A STATISTICAL
PROFILE AND THREE CASE HISTORIES

The following information comes from both published and unpublished sources within the State Department of Social Welfare and in most cases should be considered as only an approximation because of certain weaknesses in the data systems that produced the information.

- Slightly more than half (55 percent) of the more than 40,000 children in the program are males. All children are distributed fairly evenly through the age range of one year to eighteen years, except that children in the age range of thirteen through seventeen are represented almost twice as often as children of any other age; over half are caucasian of other than Latin ancestry; one in five is black; one in six is of Latin ancestry.
- Almost one child in four has been in foster care continuously for five years or more. When only those children over age five are considered, this figure jumps to almost one in three.
- Thirty-five percent have been shifted to three or more homes since being placed in foster care.
- The most common reasons for being removed from the homes of their natural parents are: child neglect (one in five), family breakup (one in eight), illness

of one or both parents (one in ten), and behavioral problems on the part of the child (one in twelve).

- One-third of the natural parents of the children in BHI foster care are reported as having no contact with that child.
- Almost one child in five has been placed in an institution, while the balance are cared for in a foster home. The institutional placement rate varies tremendously from county to county. In January of 1973, there were 23 counties with no children in institutions, while the institutional placement rate in San Joaquin and San Francisco counties approached one in three.
- The cost of caring for a child in a foster family home from infancy until age 18 can total \$35,000 or more. When a child requires specialized treatment and is placed in an institution, the cost for his care could exceed \$200,000. The average expenditure per child per month for both maintenance and services is about \$268.
- In the 20 largest counties, the average monthly rate paid a foster parent for the first quarter of 1973, ranged from a low of \$90 in Kern County to a high of \$152 in Santa Clara. (The actual reported high was San Francisco with a reported average of \$262. Upon investigation, this figure proved to be inaccurate.)

- The monthly cost of institutional placements among those counties with a significant number of children in institutions was much more even, averaging around \$500 per month.
- In the 20 largest counties, the number of children identified by the counties as eligible for federal participation averaged about 40 percent. This ranged from a high of 73 percent in Kern to a low of less than one percent in San Mateo. It is interesting to note that while Kern County was able to qualify the largest percentage of its caseload for federal aid; it also made the lowest average payment to foster parents. The rate of payment, it should be pointed out, is set in California by each county board of supervisors.

The cost of foster care falls more heavily on county government than any other welfare program save general relief

SDSW Estimates Bureau records indicate that the counties' share of the grants made in welfare programs for fiscal year 1972-73 are as follows:

	Percent of Counties Share of Total <u>Grant</u>
AFDC - Family Group	16%
AFDC - Unemployed Parent	18%
ATD - Aid to the Disabled	24%
BHI - Boarding Homes and Institutions (foster care)	53%
AB - Aid to the Blind	0%
OAS - Old Age Security	0%
GR - General Relief	100%

The Total Cost of Foster Care
Is Not Reported in Any One Place

The total annual cost to California taxpayers to provide 24-hour a day, out-of-home care through county welfare departments exceeds \$125 million. Statewide cost of foster care can only be estimated because the costs for the care of children living with relatives are not reported separately from AFDC costs generally, and because certain other costs incurred at the county level are not separately reported.

The estimate of \$125 million is based on the following assumptions:

- 10,000 (AFDC-FG) children living with relatives who receive an average payment of \$75 per month (\$9.0 million annually).
- 30,800 (BHI) children living with non-relatives or in institutions whose average cost is \$201 per month (\$74.3 million annually).
- Administrative overhead and service costs of \$93 per month for BHI children and \$60 per month for children living with relatives (\$41.5 million annually).

As an example, Table 4 in Appendix A shows the total cost of foster care in Sacramento County for the month of February 1973. For the purposes of this illustration, Sacramento County may be considered typical of California counties. The first line on Table 4 reports expenditures of \$204,000 for maintenance of BHI children. Of that amount, \$194,000 consisted of federal,

state and county funds and it is this amount that goes into SDSW statistical reports on the cost of foster care. Adding to this figure the cost of maintenance for "non-BHI" foster children and the cost of services for all of these children, the total cost rises to \$384,000, almost twice the cost identified in the SDSW statistical reports.

Long-Term Foster Care
Case History No. 1

Susan was born in 1956. Three years later her mother was charged with neglect. In 1959, she was placed with foster parents. This began a constant tug-of-war between the foster parents and the natural mother. The natural father is unknown. Because of the lack of stability in the home of her natural mother and the fact that Susan preferred to stay with her foster parents, the social workers continuously recommended that she not return to her natural mother. The foster parents were very satisfied with Susan's progress until two years ago when she began to stay out late, was sullen and disrespectful of them. Finally Susan ran away. After some time she returned home to her foster parents, pregnant. This situation deepened the lack of communication between the foster mother and Susan. Both came to agree that it would be better if Susan lived elsewhere. She now lives in an apartment with another girl. After 14 years in foster care, Susan has transferred to another welfare program, AFDC-Family Group.

Funding

Susan's foster care met the three main requirements for federal and state financial participation under AFDC-BHI: (1) she was placed in a foster home as a result of a court order, (2) her foster parents were not related to her, and (3) she was eligible for AFDC.

Because average expenditures per case are used to claim for federal and state reimbursement, it is impossible to determine exactly how much each governmental agency is contributing towards Susan's support. However, if Susan were the only child in the county's program, the monthly cost of her care would be shared as follows:

Federal share (50% of \$125)	\$ 62.50	(50%)
State share (67.5% of \$60)	40.50	(32%)
County share (remainder)	<u>22.00</u>	<u>(18%)</u>
	<u>\$125.00</u>	<u>(100%)</u>

Foster Care Ending in Adoption
Case History No. 2

A young, unwed mother, realizing that she would not be able to care adequately for her unborn child, requested adoption services through her social worker. Shortly after his birth, the child, Eddie, was relinquished for adoption and placed in an interim foster home. Two years later, a suitable adoptive home was found. The case had been closed for two years when the adoptive mother, explaining that their relationship was very poor, requested Eddie's removal from her home. While they sought a new placement for Eddie, Adoptions Services worked extensively to help him gain some self confidence. Another placement was located, but here, too, the adoptive parents felt that Eddie was not relating to them and asked for his removal. In his latest placement, Eddie finally did find a foster home. He has made an excellent adjustment in his last four years there. The family, who had not intended this at first, have begun adoption proceedings.

Funding

For his care, Eddie's foster parents received \$100 a month from the county. The county recovered 67.5 percent of its expenditures from the state due to the fact that Eddie was eligible for AFDC. The federal government, however, did not participate because Eddie was voluntarily relinquished to the county by his mother. To have been eligible for federal funding, Eddie would have had to have been placed in foster care by a court order.

If Eddie were the only child in the county's program, the monthly cost of his care would be shared as follows:

State share (67.5% x \$100)	\$ 67.50	(67.5%)
County share (remainder)	<u>32.50</u>	<u>(32.5%)</u>
	<u>\$100.00</u>	<u>(100.0%)</u>

Foster Care With A Non-Needy Relative
Case History No. 3

Five year old Jimmy was removed from his home and placed in the Sacramento Receiving Home because of his parents' arrest for the use of dangerous drugs. Besides having major drug problems and extensive criminal records, Jimmy's parents are totally disabled. Until this time, the family had been totally supported by AFDC and ATD funds.

After the incarceration of his parents, Jimmy's case was investigated further. A petition was filed to bring the matter before the Juvenile Court. He was declared a dependent of the court and subsequently placed in the home of his maternal grandmother. He is now eight years old, has been living with his grandmother the last three years and is doing well. The plan is that he will remain with her until his parents are released in two years.

Funding

This child is eligible for AFDC. He was placed in a foster home as a result of a court order. Because Jimmy's foster parent is a relative, the funding of his care comes under the AFDC-FG Program. Under California regulations, his foster parents are entitled to a monthly payment of only \$48 which is shared as follows:

Federal share	(50% of \$48)	\$24
State share	(67% of the remainder)	16
County share	(the remainder)	<u>8</u>
		<u>\$48</u>

THE PLACEMENT PROCESS

There are three types of placement for children in the AFDC-BHI program:

- A) A voluntary placement occurs when the parent or guardian feels that he can no longer adequately care for the child.
- B) A child becomes a dependent of the court (Welfare and Institutions Code Section 600) when the court determines that the parents or guardian are not providing the minimum of care for their child.
- C) A child becomes a ward of the court (Welfare and Institutions Code Sections 601 and 602) when he is declared truant, runaway, incorrigible or is otherwise delinquent.

A flow chart diagram describing the three processes is in Appendix B.

Voluntary Placements - Voluntary placements include children of unwed mothers, of parents who are incapacitated, incarcerated, or just unable, for a myriad of reasons, to cope with their children. In such a case, the child placement bureau of the county welfare department will assign a worker to the child's family to determine if he can be maintained in the home of his natural parents under the social worker's supervision. The social worker may work with another social worker from the Child Protective Services bureau. This bureau applies preventive social services aimed at improving conditions in the child's own home. These services include family counseling, day care, housekeeper services and psychiatric and medical evaluations. If the social worker from the placement bureau determines that the parents cannot adequately care for the child, he is removed from their home and placed in an out-of-home setting. A child may be placed in one of the following types of foster care facilities based upon his individual needs:

- Family Foster Homes - County welfare departments' licensing bureaus are accredited by SDSW to license residential homes in the community for the care of a maximum of 15 children. The foster children in these homes are provided with room, board and the supervision normally given by the child's natural parents.
- Private Institutions - Children requiring institutional care are generally more severely maladjusted than those children placed in family foster homes, or they are mentally ill, mentally retarded or physically handicapped. At an institution, the child may receive professional counseling,

therapy or schooling. Private institutions providing care for 16 or more children are licensed by the State Department of Social Welfare, Mental Hygiene or Public Health.

(Effective July 1, 1973, the licensing responsibilities of these state departments were consolidated within the State Department of Health.)

- Group Homes - Group homes are a special type of foster family home licensed by either the county's welfare department or SDSW depending upon the number of children housed in the facility. Group homes are similar to other family homes except that they specialize in the care of adolescents. (Licensing requirements are discussed in more detail on page 20 of this report.) .

Voluntary placements can be long term or of a temporary emergency nature.

Voluntary Placement
Case History No. 4

Sally was born a multi-problem child. She was retarded, suffered epileptic seizures, was paralyzed in the right side of her face and had club feet. After three years, her mother, an AFDC recipient, found that she was unable to give Sally the care she needed. The mother voluntarily brought her to the county welfare department. The county first placed Sally in a foster home, and later in a foster home licensed by the State Department of Mental Hygiene. Her mental condition has continued to deteriorate and she will soon be placed in a state mental hospital.

Dependents of the Court - These are children who have been removed from their home through court action (Welfare and Institutions Code Section 600) because their parents abandoned, neglected or abused them. Usually a third

party, a concerned neighbor, teacher, doctor or social worker, brings the child's situation to the attention of law enforcement agencies. The child may then be taken to a receiving home or to an interim out-of-home placement. A social worker or probation officer is assigned to the child and his natural parents to determine the cause of the present situation. The child is required to be released from the receiving home within 48 judicial hours after having been taken into custody, unless a petition for his dependency is filed at Juvenile Court. Within 24 hours from the time the petition is filed, the child must be brought before a judge of the Juvenile Court for a detention hearing. At his hearing, the Juvenile Court decides if the child should be detained while an additional investigation is undertaken to determine what the child's home environment is like.

Based upon this investigation and any other evidence, the Juvenile Court judge decides if the child is either to be returned to his own home or is to be made a dependent of the court. As a court dependent, he may be returned to his own home under the supervision of a social worker or probation officer or be placed in out-of-home care. Here, as in the case of voluntary placement, the child remains in foster care until he can be returned to his natural parents or an alternate long-range placement plan is developed for him. Section 729 of the Welfare and Institutions Code requires a hearing for each dependent of the Juvenile Court in not more than one year after the date of the court order. Hearings will be continued until the court orders the termination of its jurisdiction over the child.

Court Dependent Placement
Case History No. 5

A Public Health Nurse was dispatched to a local residence after a neighbor anonymously telephoned the Welfare Department stating she believed a couple's 2 year old was being severely neglected and mistreated. Upon arriving, the nurse found the home in a state of disarray and noted it had obviously not been cleaned in several weeks. Empty bottles, cans and garbage were strewn throughout the rooms and both parents appeared to have been drinking heavily. Although there were several bottles of liquor in the kitchen, an examination of the cupboards and refrigerator revealed the family to be desperately in need of food.

The dirty diaper-clad infant confronting the nurse appeared oblivious to his surroundings and was covered with contusions which the mother alleged had been sustained in a fall from his bed several days earlier. When questioned further, she became irate stating she could do what she wished with her own child.

Due to the severity of the situation in the home, the police were summoned and the parents arrested on charges of child neglect and battery. The child was taken into protective custody and subsequently placed in a Shelter Home pending a preliminary hearing.

The Social Worker assigned to the case concluded the situation worthy of full investigation and filed a petition to bring the matter before the Juvenile Court. Upon presentation of the case in court, the judge supported the worker's recommendation that the child be temporarily removed from his parents' home for his own protection. The infant was declared a Dependent Child of the Court and ordered into a foster placement on the grounds his parents, placed on two years probation, were incapable of providing him with adequate parental support.

Wards of the Court - Children or adolescents whom the court judges habitually truant, incorrigible (Welfare and Institutions Code Section 601) or those who commit crimes or fail to obey court orders (Welfare and Institutions Code Section 602) are declared wards of the court.

Probation officers work with a ward and his family in much the same way a social worker deals with a dependent and his family. The judicial process differs, however. The Juvenile Court decides if the child is to be a non-ward requiring supervision by a probation officer for six months or a

court ward requiring supervision by either the Department of Youth Authority or the county probation department. Court wards may remain in the juvenile center until they can be placed in foster homes, in institutions or in county-operated camps or ranches.

Court Ward Placement
Case History No. 6

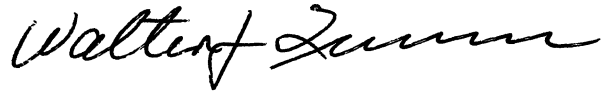
A neighbor phoned the police to report that a 15-year old boy, Jim, was seen with a number of items that did not belong to him. Police officers discovered a shed behind Jim's home filled with stolen articles. Jim readily confessed to numerous burglaries and petty thefts throughout the neighborhood. A psychological evaluation showed Jim to be borderline retarded and delinquently oriented. He was placed in a residential center where he received treatment for his problems. Jim has shown remarkable progress since placement and has made an excellent adjustment. The probation officer's plan is for Jim to remain in the treatment center until after junior high school when he will be placed in a foster home.

PRELIMINARY RECOMMENDATIONS

The purpose of this preliminary report is primarily descriptive; however, we feel there are immediate steps that SDSW should take in the fiscal management of this program. We, therefore, recommend that:

1. SDSW issue instructions to all counties that would enable those with working agreements with probation departments to immediately qualify all or some of the 2,600 wards of the court eligible for federal funding. In addition to establishing federal eligibility for these children, SDSW should issue clear and precise instructions to counties that would enable them to properly identify, for purposes of federal matching, those children classified as dependents of the court (W&I Code 600).
2. Since the loss of federal funds has a substantial impact on both state costs and on county costs, SDSW should require those counties which have not done so in the last three months to review their entire foster care caseload for the purposes of properly identifying those cases eligible for federal funding under current regulations.

3. Finally, SDSW should provide the technical assistance necessary to complete this canvass as soon as possible.



Walter J. Quinn
Acting Deputy Auditor General

August 6, 1973

Staff:

John McConnell
Robert Neves
Gerald Hawes
Robert Christophel

Table 1

The 1972 Average Monthly BHI Payment In
Three Counties Broken Down By Funding Source

	<u>Amount</u>	<u>Percent</u>
Los Angeles - Average Payment	\$186	100.0
Federal Share	28	15.1
State Share	59	31.7
County Share	99	53.2
San Diego County - Average Payment	\$158	100.0
Federal Share	35	22.1
State Share	45	28.5
County Share	78	49.4
Fresno County - Average Payment	\$ 89	100.0
Federal Share	28	31.5
State Share	38	42.7
County Share	23	25.8

Source: State Department of Social Welfare

Note: These figures include payments for both federally eligible and ineligible BHI cases. They do not include payments for foster children in the AFDC-FG Program who are almost all eligible for federal payments.

Table 2

Boarding Homes and Institutions Caseload,
Percent of Caseload Claimed for Federal Matching and
Percent of Children Placed in Institutions January 1973

	<u>BHI Caseload</u>	<u>Percentage Claimed For Federal Matching</u>	<u>Percentage Institutionalized</u>
Alameda	1,280	55.1	13.7
Contra Costa	836	52.3	26.2
Fresno	570	64.2	.4
Kern	675	73.2	5.0
Los Angeles	13,600	22.1	23.1
Marin	165	26.7	10.3
Monterey	223	50.7	0
Orange	713	47.0	13.0
Riverside	705	57.6	5.5
Sacramento	946	53.8	17.3
San Bernardino	922	52.7	18.1
San Diego	1,543	41.3	17.6
San Francisco	2,074	38.0	29.4
San Joaquin	420	72.7	32.9
San Mateo	613	.7	12.4
Santa Barbara	290	44.5	5.5
Santa Clara	1,295	54.7	19.5
Sonoma	414	26.6	8.9
Stanislaus	415	70.4	14.7
Ventura	274	71.2	5.8
Remaining Counties	<u>2,907</u>	57.6	9.3
Statewide	<u>30,880</u>	38.1	18.7

Source: SDSW Boarding Homes and Institutions Caseload Movement and Expenditures
Report - CA 237 BHI, January 1973.

Table 3

Boarding Homes and Institutions
Caseloads, Rates and Average Payments
For the Twenty Largest Counties

	<u>BHI Caseload</u> <u>1/</u>	<u>Highest Regular</u> <u>2/</u> <u>Foster Home Rate</u>	<u>Average</u> <u>3/</u> <u>Payment/Child In Foster Home</u>	<u>Average</u> <u>3/</u> <u>Payment/Child In Institution</u>
Alameda	1,280	\$130	\$129	\$572
Contra Costa	836	130	107	588
Fresno	570	110	99	250
Kern	675	110	90	400
Los Angeles	13,600	107	148	472
Marin	165	160	128	409
Monterey	223	125	110	-
Orange	713	148	117	492
Riverside	705	125	109	504
Sacramento	946	125	125	498
San Bernardino	922	120	103	409
San Diego	1,543	127	121	533
San Francisco*	2,074	115	127	650
San Joaquin	420	125	140	354
San Mateo	613	130	124	-
Santa Barbara	290	126	119	474
Santa Clara	1,295	98	152	522
Sonoma	414	108	149	387
Stanislaus	415	110	128	645
Ventura	274	115	97	-

1/ Public Welfare in California January 1973.

2/ County Boards of Supervisors set the rates in each county and set a higher rate for older children. This is the rate for an older child without unusual special needs.

3/ BHI caseload movement and expenditures report CA 237, first quarter of 1973 average.

* San Francisco data estimated from other sources.

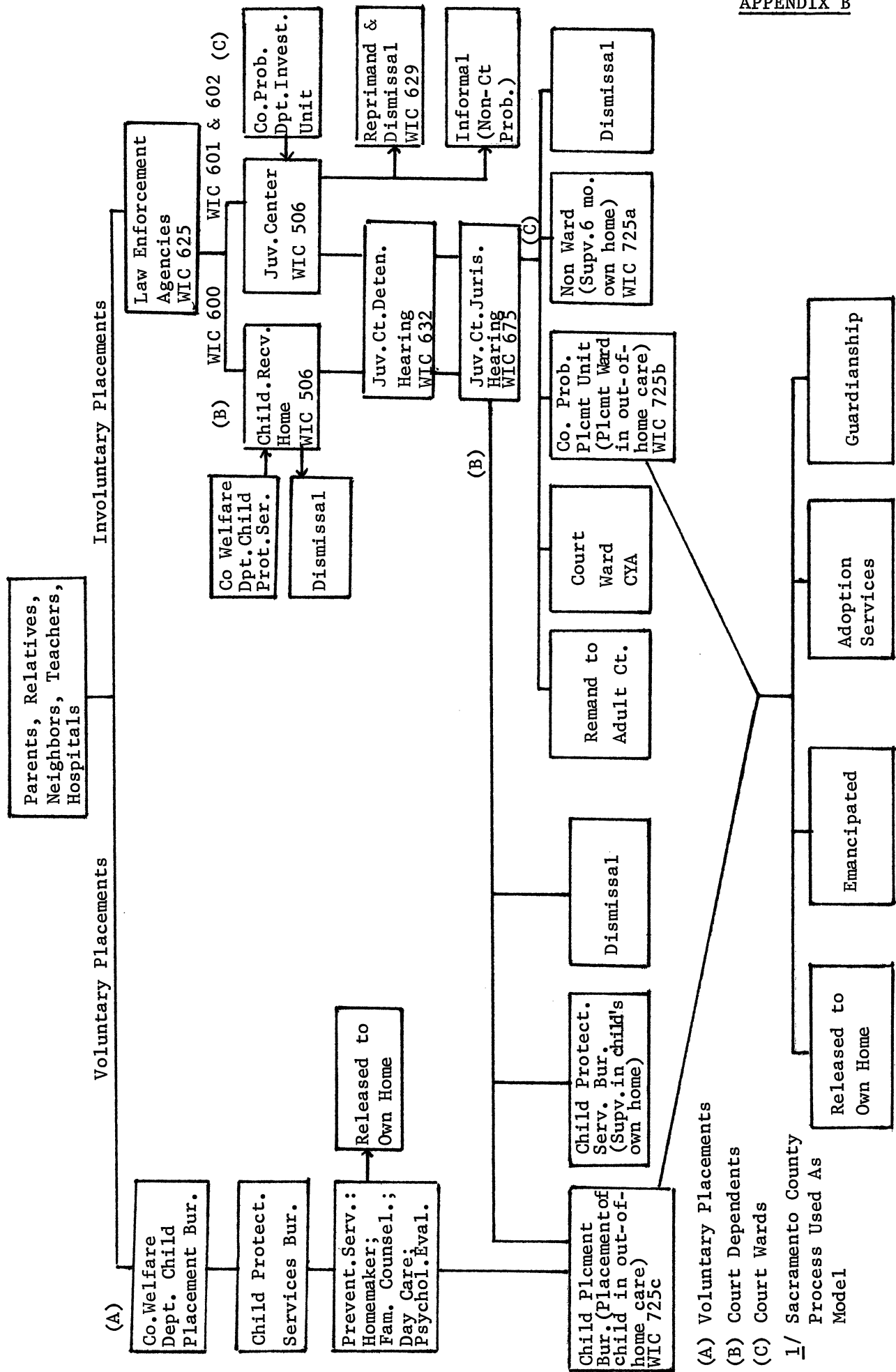
Table 4

Sacramento County Welfare and Probation Departments
Foster Care Program for Children
Expenditures and Sources of Funds
February 1973

	Number Of Children	Average Cost Per Child	Total Expenditures	Sources of Funds				
				Federal	State	County	Parents	Others
<u>Maintenance</u>								
AFDC - Boarding homes and institutions	1,012	\$201	\$204,000	\$ 51,000	\$60,000	\$ 83,000	\$3,000	\$ 7,000
AFDC - Family groups	277	50	14,000	7,000	5,000	2,000		
Non-AFDC	<u>142</u>	<u>235</u>	<u>33,000</u>			<u>24,000</u>	<u>5,000</u>	<u>4,000</u>
Total maintenance	<u>1,431</u>	<u>\$175</u>	<u>\$251,000</u>	<u>\$ 58,000</u>	<u>\$65,000</u>	<u>\$109,000</u>	<u>\$8,000</u>	<u>\$11,000</u>
<u>Services</u>								
Placement units			\$ 97,000	\$ 63,000		\$ 34,000	-	-
Licensing unit			<u>36,000</u>	<u>24,000</u>	<u>\$ 3,000</u>	<u>9,000</u>	-	-
Total services	<u>1,431</u>	<u>\$ 93</u>	<u>\$133,000</u>	<u>\$ 87,000</u>	<u>\$ 3,000</u>	<u>\$ 43,000</u>	-	-
Total Maintenance and Services	<u>1,431</u>	<u>\$268</u>	<u>\$384,000</u>	<u>\$145,000</u>	<u>\$68,000</u>	<u>\$152,000</u>	<u>\$8,000</u>	<u>\$11,000</u>
			100%	37%	18%	40%	2%	3%

SOURCE: Data for this table was obtained from Sacramento County's records.

Chart of
Foster Care Placement Process^{1/}



DEPARTMENT OF SOCIAL WELFARE

744 P. STREET
SACRAMENTO 95814

October 30, 1972

CIRCULAR LETTER NO. 2585

AFDC - CHILDREN IN BOARDING HOMES AND INSTITUTIONS

The purpose of this letter is to clarify the eligibility requirements for children in boarding homes and institutions.

Dependent children of the court as described in Welfare and Institutions Code Section 600 (a), (b) and (d) are eligible for AFDC-BHI; federal participation is available for them if they meet the requirements of Regulation 44-323.4. Children adjudged dependent solely on the grounds set forth in Welfare and Institutions Code Section 600(c) are not eligible for AFDC-BHI.

Children adjudged to be wards of the court under Welfare and Institutions Code Sections 601 or 602 are not eligible for AFDC-BHI. Neither federal nor state participation in foster care payments for such children is available.

Contact reference: Mike Fishel, telephone 916/445-7046.

Distribution

C-1 Welfare Directors
C-2 County Administrative Staff
C-4 Family and Children Programs Staff
C-13 Welfare Fiscal Supervisors
D-1 County Auditors

DEPARTMENT OF SOCIAL WELFARE

744 P STREET
SACRAMENTO 95814



November 20, 1972

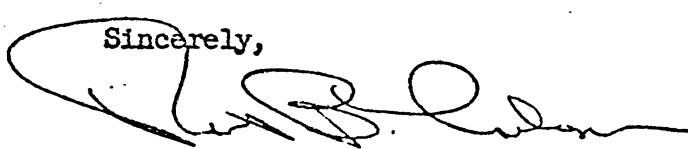
TO: ALL COUNTY WELFARE DIRECTORS

RE: Circular Letter 2585

Circular Letter 2585, dated October 30, 1972, advised you concerning the procedures applicable to children adjudged wards of a court under Welfare and Institutions Code Sections 601 and 602.

Since the issuance of the above-mentioned letter, additional information has come to our attention which requires further inquiry with federal authorities. You are not required to change existing procedures pending the outcome of our inquiry.

Sincerely,


ROBERT B. CARLESON
Director of Social Welfare

Memorandum

To : MR. DON TEAYER
Legal Coordinator
Department of Social Welfare
744 P Street

Date : January 12, 1973

File No.:

From : Office of the Attorney General

Subject: Availability of AFDC-BHI to W&I Code Sec. 601 and 602
Foster Care Wards

Requested by: The Honorable Robert B. Carleson
Director, State Department of Social Welfare

The Honorable Robert B. Carleson, Director, SDSW, has requested advice on the following questions:

1. May children declared wards of the court pursuant to Welfare and Institutions Code Sections 601 and 602 and placed in foster care, and who are otherwise eligible, receive AFDC-BHI?
2. If such children are eligible for AFDC-BHI, are placing-counties entitled to state participation only, or are they entitled to federal participation, as well?
3. If ineligible for federal participation, can counties be made eligible by a change in the state plan?

The conclusions are:

In cases arising under W&I Code Sec. 726 (a), 601 and 602 juveniles placed in foster care and who are otherwise eligible may receive AFDC-BHI.

It is also possible to argue that regulations 25-532.02 and 44-305.13 establish that state participation is available for 601 and 602 juveniles in foster care generally, regardless of whether or not they are placed under 726 (a), (b), or (c).

The contrary view would read 11251 narrowly, so that removal under 726 (b) or (c) would not constitute a finding of inadequate parental protection and care. As such, 601 and 602 juveniles in this situation would not be eligible. Such a position would necessitate an attack on the validity of regulations 25-532.02 and 44-305.13.

Although the issue is clouded by a narrow reading of 44-305.13 and the federal legislative history supporting that reading, a literal reading of Sec. 408 and 45 CFR 233.110 would allow federal participation for otherwise eligible 601 and 602 juveniles in foster care. A change in the language of regulation 44-305.13 to broaden its scope and bring it into conformity with 45 CFR 233.110 would clarify the matter.

ANALYSIS

W&I Code Sec. 11251 (b) sets forth the eligibility requirements for children placed in foster care. In relevant part it reads:

"11251. Aid shall also be provided under this chapter to or in behalf of any child under the age of 18, except as provided in Section 11253, who is in need and lacks parental support and care and who:

"(b) ~~Jacks parental support for the same reasons set out in Section 11250;~~ is in need of aid as well as protection or care by persons other than his parents, and has been placed in foster care for ~~purposes of providing such care and protection.~~"

"For purposes of this chapter, 'foster care' means care other than in the home of his parent or relative, as these terms are used in Title IV of the Federal Social Security Act."

The section is open to interpretation. It is possible to argue that, apart from income and property limitations, the basis for aid under 11251 is lack of parental support (see W&I 11250) and placement in foster care based upon the child's need of protection and care by persons other than his parents, while judicial commitment to foster care of 601 and 602 children is for the purpose of reformation and rehabilitation rather than care and protection. This view is supported by W&I Sec. 502 which calls for removal of a minor under juvenile court law "...only when his welfare or safety and protection of the public cannot be adequately safeguarded without removal...." (Emphasis added.)

On the other hand, one could argue that commitment to foster care of 601 and 602 children is based on a finding that the child needs protection and care by persons other than his parents so that a 601 or 602 juvenile placed in foster care and otherwise eligible would qualify for aid under the terms of 11251. SDSW regulation 25-532.02 seems to support this view since it allows state participation in payments for an otherwise eligible child living in a private institution or hospital or private boarding home.

"25-532.02 AFDC CHILDREN IN INSTITUTIONS

"There is no federal or state participation in any payment made for a child who is an inmate in a public institution or hospital other than for temporary care as defined in Regulation 42-505 et seq.

"Exception: A child is not an inmate if he is attending school in a public education or vocational training institution wherein living in the institution is incidental to the training program.

"There is state but not federal participation in payments made for an otherwise eligible child living in a private institution or hospital or private boarding home.

"Exception: Federal participation is available in payments made for a child living in a foster home or a nonprofit private institution licensed by the state when such placement was the result of judicial action, and the conditions set forth in Regulation 44-323.42" (Emphasis added.)

Although 25-532.02 is limited to AFDC children in institutions and does not cover children placed with individuals, it lends weight to the contention that otherwise eligible 601 and 602 juveniles placed in foster care generally are eligible for state payments.

Note, however, there is neither state nor federal participation in any payment made for a child who is an inmate in a public institution. SDSW regulation 42-563.72 indicates a child living in a public institution on court commitment is considered an inmate. As such an otherwise eligible minor adjudged a ward on the ground that he is a person described by Section 601 and committed to a juvenile home or similar institution in accord with W&I Sec. 730 would be ineligible for AFDC-BHI. The same would be true for a 602 committed to a public institution in accord with W&I Sec. 731.

SDSW regulation 44-305.13 also adds support to the argument that 601 and 602 juveniles are eligible for aid.

"13 Child in Foster Home or Institution

"If a child is living in a foster home or institution, payment may be made to the foster home, the institution, the parent or other relative responsible for the child, the probation officer if the child is a ward of the juvenile court, or a private child placing agency licensed under W&IC 16000, Item (b) if the child is under the care of that agency. If the child is a parolee from the California Youth Authority for whom a parole agent signed the application, the warrant may be delivered to the care of the area office of the California Youth Authority." (Emphasis added.)

A juvenile within the description of Sec. 600 is adjudged a dependent child of the court whereas a 601 or 602 is adjudged a ward of the court. The regulation therefore implies eligibility for 601 and 602 juveniles in foster care since payment may be received for wards of the court.

A child found to be a ward or dependent child of the court (in accord with W&I Sec. 725) may be removed from physical custody of the parents under W&I Sec. 726 which, in relevant part reads:

"726. In all cases wherein a minor is adjudged a ward or dependent child of the court, the court may limit the control to be exercised over such ward or dependent child by any parent or guardian and shall by its order clearly and specifically set forth all such limitations, but no ward or dependent child shall be taken from the physical custody of a parent or guardian unless upon the hearing the court finds one of the following facts:

"(a) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the minor.

"(b) That the minor has been tried on probation in such custody and has failed to reform.

"(c) That the welfare of the minor requires that his custody be taken from his parent or guardian."

A minor placed in foster care under 726 (a) would seem to meet the eligibility requirements as outlined in 11251. Placement under 726 (c) raises a more difficult problem.

Removal under 726 (c) could be construed as an implied finding of inadequate parental protection and care, as that term is used in 11251, since the welfare of the child calls for removal. The fact that 726 (a) specifically provides for removal in case of neglect or improper parental maintenance suggests that 726 (c) was intended to cover a different situation. The alternative view would allow for the possibility of removal under 726 (c), while recognizing that parental care and protection are adequate. In this case, AFDC-BHI eligibility for 601 and 602 juveniles in foster care, in accord with 11251, would be doubtful.

As a practical matter the eligibility question may be further complicated should the court fail to specify under which part of Sec. 726 the determination has been made. In sum, it would appear that in a number of cases, specifically those arising under 726 (a), 601 and 602 juveniles placed in foster care and who are otherwise eligible, may receive AFDC-BHI.

The guidelines for federal participation in payments for foster home care of dependent children are set forth in Section 408 of Title IV of the Social Security Act which reads in part:

"Sec. 408. Effective for the period beginning May 1, 1961--

"(a) the term 'dependent child' shall, notwithstanding section 406(a), also include a child (1) who would meet the requirements of such section 406(a) or of section 407 except for his removal after April 30, 1961, from the home of a relative (specified in such section 406(a)) as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child (2) whose placement and care are the responsibility of (A) the State or local agency administering the State plan approved under section 402, or (B) any other public agency with whom the State agency administering or supervising the administration of such State plan has made

an agreement which is still in effect and which includes provision for assuring development of a plan, satisfactory to such State agency, for such child as provided in paragraph (f) (1) and such other provisions as may be necessary to assure accomplishment of the objectives of State plan approved under section 402, (3) who has been placed in a foster family home or child-care institution as a result of such determination, and (4) who (A) received aid under such State plan in or for the month in which court proceedings leading to such determination were initiated, or (B) (i) would have received such aid in or for such month if application had been made therefor, or (ii) in the case of a child who had been living with a relative specified in section 406(a) within 6 months prior to the month in which such proceedings were initiated, would have received such aid in or for such month if in such month he had been living with (and removed from the home of) such a relative and application had been made therefor;...." (Emphasis added.)

Relevant legislative history provides some insight into the purpose of that section.

"C. Federal Payments for foster care of dependent children

"The objective of the afdc program is to provide cash assistance for needy children in their own homes. As is true of other children, there are some home environments that are clearly contrary to the best interests of these children. The situation is particularly pointed up by the fact, noted earlier in this report, that some States have placed in operation statutes terminating payment when a child's home is found unsuitable because of the immoral or negligent behavior of the parent. Often, however, remedial action on behalf of the child was not possible. We believe that this undesirable situation could be avoided, in many instances, if assistance under this program were available for the care of the child in a foster family home when such care is necessary."

1961 U.S. Code Cong. and Admin. News, p. 1721.

".4 Payments to children removed by court order into foster care.

"In order to give the States an alternative to leaving children in unsuitable homes or caring for them elsewhere without Federal participation in the cost, the Congress last year enacted a temporary provision for Federal participation, under limited circumstances, in the cost of care in foster family homes.

"Under current provision of law, the same agency that administers the aid-to-dependent-children program must be responsible for the care and placement of the child removed to a foster home. There are in a few States other public agencies, particularly juvenile courts, which frequently, under existing practices, are responsible for arranging the placement and providing the supervision of children who the court has decided must live in homes other than those of their own families." 1962 U.S. Code Cong. and Admin. News, p. 1954.

"(g) Foster care in AFDC

"The committee believes that some children now receiving AFDC would be better off in foster homes or institutions than they are in their own homes. This situation arises because of the poor home environment for child upbringing in homes with low standards, including multiple instances of births out of wedlock." 1967 U.S. Code Cong. and Admin. News, p. 3000.

The emphasis on immoral, or negligent parental behavior or low moral standards contained in the legislative history suggests a limited number of situations where removal is called for in accord with Sec. 408. As such, 601 and 602 juveniles placed under 726 (c) would seem not to qualify for federal participation. A literal reading of Sec. 408 would suggest a contrary conclusion, all that is required is a judicial determination that continuation in the home would be contrary to the welfare of the child. Welfare is apparently used in a broad sense. HEW regulations are in accord. 45 CFR Sec. 233.110 states in part:

"Sec. 233.110 AFDC foster care.

"(a) State plan requirements. A State plan under title IV-A of the Social Security Act must:

"(1) Provide that aid will be given in the form of foster care for each otherwise eligible child:

"(i) Who was removed after April 30, 1961, from the home of a relative specified in the AFDC plan, as a result of a judicial determination that continuance in the home of the relative would be contrary to his welfare, for any reason, and who has been placed in foster care as a result of such determination;...."
(Emphasis added.)

Relying on this literal expanded view, removal under 726 (c) would seem to qualify for federal participation, assuming other conditions outlined in Sec. 408 have been met. The matter is further complicated by SDSW regulation 44-323.41 which reads in part:

".41 Criteria for Federal Participation

"Federal participation in the cost of foster care payments is available for children in foster care when the following conditions are met:

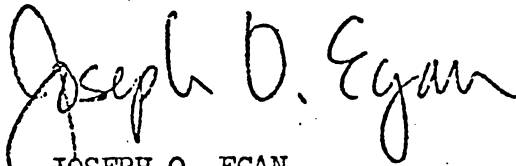
".411 The child is removed from his home or the home of a relative (see 44-213) after April 30, 1961, by court order because of neglect of [sic] unsatisfactory home conditions...."

This reference to neglect seems more in accord with the statements of intent found in the legislative history cited previously so that in 601 and 602 juveniles would qualify for federal participation only in cases where placement in foster care was based on neglect or unsatisfactory home conditions in the moral sense. It is possible, however, to read unsatisfactory home conditions so as to give it the broad reach found in the literal reading of Sec. 408 and 45 CFR 233.110 in which case federal participation would follow under 44-323.41 where continuance in the home would be contrary to the child's welfare for any reason.

MR. DON THAYER
January 12, 1973
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Section 403 also requires that a written agreement be in effect between the welfare department and the public agency with responsibility for the placement and care of foster care juveniles under which a plan for each child will be made. SDSW regulation 29-405 sets forth such an agreement.

If the Department determines that 601 and 602 juveniles in foster care are eligible for federal participation, the language of 29-405 should be modified since it currently refers only to children made dependent children of the court under Sec. 600 of the W&I Code.



JOSEPH O. EGAN
Deputy Attorney General

JOE:bjw